

STATEMENT OF
GENERAL RICHARD G. STILWELL, USA (RET.)
DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY
BEFORE
THE COMMITTEE ON ARMED SERVICES
U.S. HOUSE OF REPRESENTATIVES
REGARDING H.R. 4681
SEPTEMBER 6, 1984

MR. CHAIRMAN, I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THE COMMITTEE TODAY TO PRESENT THE DEPARTMENT'S VIEWS CONCERNING PROPOSED BILL H.R. 4681 WHICH ADDRESSES THE USE OF THE POLYGRAPH WITHIN THE FEDERAL GOVERNMENT AND THE INSTITUTION OF PRE-PUBLICATION REVIEW REQUIREMENTS AMONG FEDERAL EMPLOYEES.

IN FEBRUARY 1984, I APPEARED BEFORE THE SUBCOMMITTEE ON CIVIL SERVICE OF THE HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE CONCERNING THIS BILL. THE CONCERNS I EXPRESSED IN FEBRUARY CONTINUE TO APPLY. TODAY, I WILL REITERATE THOSE CONCERNS AND, WITH RESPECT TO USE OF THE POLYGRAPH, ENDEAVOR TO CLARIFY FOR YOU THE NATURE, SCOPE AND PURPOSE OF CHANGES THAT THE DEPARTMENT IS CONSIDERING IN THIS AREA -- A COPY OF OUR DRAFT DIRECTIVE AND REGULATION HAS BEEN PROVIDED TO YOUR STAFF.

SECTION 2 OF THE BILL PROPOSES AMENDMENTS TO CHAPTER 73 OF TITLE 5, U.S. CODE. AS WE READ SECTION 7362, IT WOULD PROHIBIT USE OF THE POLYGRAPH WITH REGARD TO THE CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE FOR ANY PURPOSE OTHER THAN A CRIMINAL INVESTIGATION, EXCEPT INSOFAR AS IT MAY BE USED AT THE NATIONAL SECURITY AGENCY, WHICH IS EXEMPTED FROM THE BILL ALTOGETHER, AND EXCEPT FOR POLYGRAPH EXAMINATIONS REQUESTED BY THE EMPLOYEE.

ENACTMENT OF THIS LEGISLATION WOULD PREVENT THE DEPARTMENT FROM UTILIZING THE POLYGRAPH IN WAYS IT IS CURRENTLY SUCCESSFULLY BEING EMPLOYED, AS WELL AS PRECLUDE ITS USE IN WAYS BEING CONTEMPLATED FOR THE FUTURE. TO BE MORE SPECIFIC, THE POLYGRAPH IS CURRENTLY USED IN DOD FOR SEVERAL PURPOSES NOT RECOGNIZED BY THE BILL: FIRST, TO RESOLVE

DEROGATORY INFORMATION DEVELOPED IN PERSONNEL SECURITY FIELD INVESTIGATIONS THAT CANNOT BE RESOLVED IN ANY OTHER WAY; SECOND, TO ENSURE THAT INTELLIGENCE AGENTS, ACTING ON BEHALF OF DOD INTELLIGENCE COMPONENTS, ARE BONA FIDE; THIRD, FOR EXCULPATORY PURPOSES; AND FOURTH, FOR COUNTERINTELLIGENCE INVESTIGATIONS (WHERE EVIDENCE OF CRIMINAL CONDUCT MAY NOT BE PRESENT). MOREOVER, THE BILL WOULD PRECLUDE THE DEPARTMENT OF DEFENSE FROM IMPLEMENTING THE LIMITED SORT OF PROGRAM THAT DEFENSE HAS HAD UNDER CONSIDERATION FOR THE LAST TWO YEARS. BEFORE I DESCRIBE FOR YOU THE KEY FEATURES OF THIS CONTEMPLATED PROGRAM, LET ME BRIEFLY HIGHLIGHT THE EVENTS THAT LED TO ITS DEVELOPMENT.

TRADITIONALLY, THE KEY TO DETERMINING THE TRUSTWORTHINESS AND SUITABILITY OF INDIVIDUALS FOR ACCESS TO CLASSIFIED INFORMATION HAS BEEN THE PERSONNEL SECURITY FIELD INVESTIGATION, WITH THE NATURE AND EXTENT OF THIS INVESTIGATION DEPENDING UPON THE LEVEL OF SENSITIVITY OF THE INFORMATION INVOLVED. ESSENTIALLY, SUCH INVESTIGATION WOULD INCLUDE -- CHECKS OF LOCAL AND NATIONAL LAW ENFORCEMENT AGENCIES -- EMPLOYMENT -- CREDIT REFERENCES -- AND INTERVIEWS WITH FRIENDS, NEIGHBORS, CO-WORKERS, AND OTHER PERSONS WHO ARE IN A POSITION TO COMMENT ON THE INDIVIDUAL'S RELIABILITY AND TRUSTWORTHINESS.

HOWEVER, COMMENCING IN THE MID-1970s, A NUMBER OF EVENTS TOOK PLACE WHICH SERIOUSLY ERODED DOD PERSONNEL SECURITY FIELD INVESTIGATIONS. THESE EVENTS INCLUDED: A CONGRESSIONALLY DIRECTED REDUCTION IN DOD INVESTIGATIVE RESOURCES -- THE ADVERSE IMPACT OF THE PRIVACY ACT OF 1974

ON THE WILLINGNESS OF PERSONS OR ORGANIZATIONS TO PROVIDE RELEVANT INFORMATION -- LIMITATIONS PLACED ON ACCESSIBILITY OF SCHOOL RECORDS -- AND, ISSUANCE OF JUSTICE DEPARTMENT REGULATIONS THAT CAUSED MANY LOCAL JURISDICTIONS TO SEVERELY LIMIT ACCESS TO LAW ENFORCEMENT RECORDS.

THE CONSEQUENCES OF THESE EVENTS WERE: A SERIOUS DEGRADATION IN OUR ABILITY TO CONDUCT PERSONNEL SECURITY INVESTIGATIONS -- LESS RELEVANT INFORMATION BEING AVAILABLE -- AND, A SIGNIFICANTLY LESS VALID INVESTIGATIVE PRODUCT.

THIS SITUATION -- WHILE IN ITSELF A MATTER OF SERIOUS CONCERN -- WAS FURTHER COMPLICATED BY ANOTHER, MORE THREATENING TURN OF EVENTS -- THE INCIDENCE OF ESPIONAGE APPEARED TO BE INCREASING. AS PRIMARY

EXAMPLES, CONSIDER THAT THE CASES OF BOYCE & LEE, LT COOK, CWO HELMICH AND WILLIAM HOLDEN BELL, ALL WERE UNCOVERED IN THE PERIOD BETWEEN THE LATE 1970s AND END OF 1983. THESE CASES INVOLVED THE COMPROMISE TO OUR ADVERSARIES OF INFORMATION RANGING FROM THE MOST SECRET RESEARCH AND DEVELOPMENT MATERIAL TO TOP SECRET COMPARTMENTED INTELLIGENCE INFORMATION.

IN LIGHT OF THIS SITUATION, IN 1982 I APPOINTED A SELECT PANEL, COMPOSED OF SENIOR DEFENSE OFFICIALS, WHO WERE CHARGED WITH REVIEWING THE DEPARTMENT'S PERSONNEL SECURITY PROGRAM FROM TOP TO BOTTOM AND DEVELOPING RECOMMENDATIONS FOR RESOLUTION OF THE PROBLEM.

AMONG THE GENERAL RECOMMENDATIONS MADE BY THE PANEL WERE RECOMMENDATIONS FOR TIGHTENING CONTROLS ON THE ISSUANCE OF CLEARANCES, IMPROVED ADJUDICATION OF SECURITY CASES, AND REINSTITUTION OF THE REGULAR REINVESTIGATION

OF CLEARED INDIVIDUALS. THE DEPARTMENT HAS TAKEN ACTION IN ALL THESE AREAS TO IMPROVE SECURITY.

OF PARTICULAR IMPORTANCE, THE PANEL RECOMMENDED A COUNTERINTELLIGENCE-SCOPE POLYGRAPH EXAMINATION TO ASSIST IN DETERMINING THE INITIAL AND CONTINUED ELIGIBILITY OF A LIMITED NUMBER OF INDIVIDUALS IN POSITIONS THAT REQUIRE ACCESS TO EXTREMELY SENSITIVE CLASSIFIED INFORMATION.

IT WAS IN THIS CONTEXT THEN, THAT THE DEPARTMENT DEVELOPED A PROPOSED REVISION OF ITS POLYGRAPH POLICY -- TO SUPPLEMENT OUR INVESTIGATIVE PROGRAM -- TO DETER AND DETECT ESPIONAGE. AFTER TWO COMPLETE COORDINATIONS WITH THE DOD COMPONENTS, HEARINGS BEFORE A NUMBER OF HOUSE AND SENATE COMMITTEES AND SUBCOMMITTEES, AS WELL AS INFORMAL, DETAILED DISCUSSIONS WITH THE MEMBERS AND STAFFS OF HOUSE AND SENATE COMMITTEES AND SUBCOMMITTEES THAT HAVE EXPRESSED AN INTEREST IN THIS AREA, THIS PROPOSAL HAS NOW BEEN REFINED CONSIDERABLY.

THE PRIMARY CHANGE TO EXISTING POLICY WOULD PERMIT A LIMITED POLYGRAPH EXAMINATION, COMPRISED SOLELY OF QUESTIONS DESIGNED TO DETERMINE WHETHER AN INDIVIDUAL IS A SPY FOR A HOSTILE INTELLIGENCE SERVICE, PRIOR TO GRANTING ACCESS TO THE MOST SENSITIVE CLASSIFIED INFORMATION HELD BY THE DEPARTMENT. UNDER THIS CONCEPT, HEADS OF DEFENSE COMPONENTS, WITH THE APPROVAL OF MY OFFICE, COULD, IF THEY SAW FIT, ESTABLISH THIS SORT OF LIMITED EXAMINATION -- EXCLUDING ANY QUESTIONS OF A PERSONAL NATURE --

AS A CONDITION OF ACCESS TO SPECIFICALLY DESIGNATED CLASSIFIED INFORMATION PROTECTED WITHIN SO-CALLED "SPECIAL ACCESS PROGRAMS," ESTABLISHED UNDER THE AUTHORITY OF EXECUTIVE ORDER 12356. I HAVE ATTACHED AT ENCLOSURE 1 A LIST OF THE QUESTIONS WHICH MAY BE ASKED DURING AN EXAMINATION.

THERE HAS BEEN SOME CONCERN EXPRESSED THAT THE DEPARTMENT INTENDS TO REQUIRE POLYGRAPH EXAMINATIONS OF ALL PERSONNEL CLEARED FOR SENSITIVE COMPARTMENTED INFORMATION, REFERRED TO AS SCI. I WANT TO EMPHASIZE THAT THIS IS SIMPLY NOT THE CASE. RATHER, THE PROPOSED USE WOULD BE LIMITED TO SPECIFICALLY DESIGNATED CLASSIFIED INFORMATION WITHIN SPECIAL ACCESS PROGRAMS. WHILE SOME OF THE POSITIONS BEING CONSIDERED FOR POLYGRAPH EXAMINATION WOULD UNDOUBTEDLY ALSO REQUIRE ACCESS TO SCI, THE POINT IS THAT SCI ACCESS, PER SE, WOULD NOT BE THE QUALIFYING CRITERION -- RATHER THE POSITION WOULD HAVE TO REQUIRE ACCESS TO INFORMATION DESIGNATED BY THE COMPONENT HEAD AS REQUIRING SPECIAL PROTECTION GREATER THAN THAT OTHERWISE REQUIRED BY THE SPECIAL ACCESS PROGRAM CONCERNED.

UNDER THIS PROPOSAL, NO ACTION COULD BE TAKEN ON THE BASIS OF HIS OR HER REACTION AS REFLECTED ON THE POLYGRAPH CHARTS, UNLESS ADDITIONAL INVESTIGATION PRODUCED DEROGATORY INFORMATION CONCERNING THE INDIVIDUAL INVOLVED WHICH IN AND OF ITSELF WOULD SUPPORT SUCH ACTION. ANY EXCEPTION TO THIS POLICY WOULD HAVE TO BE APPROVED BY THE SECRETARY OF DEFENSE; DEPUTY SECRETARY OF DEFENSE; SECRETARY OF ONE OF THE MILITARY DEPARTMENTS; DIRECTOR, NATIONAL SECURITY AGENCY; OR MYSELF. FURTHERMORE, REFUSALS TO TAKE SUCH EXAMINATIONS COULD NOT BE THE BASIS FOR FIRING AN EMPLOYEE. ANY CURRENT EMPLOYEE, OTHER THAN EMPLOYEES OF THE NATIONAL SECURITY AGENCY, WHO REFUSED TO

TAKE SUCH AN EXAMINATION AS A CONDITION OF OBTAINING ACCESS WOULD EITHER REMAIN IN HIS JOB, OR WOULD BE PLACED IN A POSITION OF EQUAL GRADE OR PAY WITHIN DOD.

THERE HAS BEEN CONSIDERABLE INTEREST IN THE NUMBER OF DOD PERSONNEL WHO WOULD BE EFFECTED BY THIS CHANGE. ACCORDINGLY, I BELIEVE IT WOULD BE WORTHWHILE TO TAKE A FEW MOMENTS TO ATTEMPT TO CLARIFY THIS POINT.

WE HAVE REACHED AN INFORMAL AGREEMENT WITH THREE OTHER CONGRESSIONAL COMMITTEES WHO HAVE REVIEWED THIS PROPOSED PROGRAM TO CONDUCT A PILOT TEST OF THIS NEW POLICY, LIMITED IN ITS FIRST YEAR TO NO MORE THAN 3,500 EXAMINATIONS. AFTER THIS TEST PERIOD, AN ASSESSMENT OF THE PROGRAM, INCLUDING ITS FURTHER EXPANSION, WOULD BE CONSIDERED IN CONSULTATION WITH THE CONGRESS. IN ANY CASE, THE DEPARTMENT'S CAPABILITIES TO CONDUCT MORE SUCH EXAMINATIONS WOULD, AS A PRACTICAL MATTER, BE LIMITED TO ROUGHLY THESE LIMITS FOR THE NEXT TWO TO THREE YEARS, SINCE ANY GREATER EXPANSION WOULD NECESSITATE ADDITIONAL EXAMINERS WHO MUST BE TRAINED AND EQUIPPED.

WE WOULD HOPE THIS COMMITTEE WOULD SIMILARLY SUPPORT THIS APPROACH. LANGUAGE WHICH AUTHORIZES SUCH A TEST PROGRAM IS, IN FACT, CONTAINED IN THE SENATE VERSION OF THE FY 85 DEFENSE AUTHORIZATION BILL, WHICH IS, OF COURSE, IN CONFERENCE. THIS IS THE CONCEPT WE ENDORSE; WE BELIEVE IT PROVIDES A PRUDENT WAY TO IMPLEMENT THIS PROPOSED POLICY CHANGE.

AS I MENTIONED, ONLY PERSONS WITH ACCESS TO SPECIFICALLY DESIGNATED CLASSIFIED INFORMATION PROTECTED WITHIN SPECIAL ACCESS PROGRAMS COULD BE SUBJECT TO A POLYGRAPH EXAMINATION UNDER THIS POLICY. BUT SINCE THESE

THESE CATEGORIES OF ESPECIALLY SENSITIVE INFORMATION HAVE NOT YET BEEN IDENTIFIED, A PRECISE ESTIMATE OF HOW MANY PERSONS MIGHT ULTIMATELY BE AFFECTED IS NOT POSSIBLE AT THIS TIME. SUFFICE IT TO SAY, THE DEPARTMENT DOES NOT ANTICIPATE MORE THAN 10,000 SUCH EXAMINATIONS BEING ADMINISTERED IN ANY GIVEN YEAR, EVEN IF THIS PROGRAM WERE FULLY IMPLEMENTED. YOU MUST UNDERSTAND THAT WE ARE NOT TALKING ABOUT POLYGRAPHS FOR ALL PERSONS WITH SOME FORM OF SPECIAL ACCESS, BUT RATHER THOSE WITH ACCESS TO SPECIFICALLY DESIGNATED INFORMATION WITHIN SPECIAL ACCESS PROGRAMS. THUS WE ARE NOT TALKING ABOUT EVERYONE WITH ACCESS TO SENSITIVE COMPARTMENTED INFORMATION OR SCI, BUT RATHER THOSE WITH ACCESS TO SPECIFICALLY DESIGNATED, ESPECIALLY SENSITIVE, INFORMATION WITHIN THE CATEGORY OF SCI. THIS DETERMINATION WILL BE LEFT TO MY OFFICE BASED UPON THE JUSTIFICATIONS PROVIDED BY THE HEADS OF DOD COMPONENTS WHO WISH TO INSTITUTE A LIMITED POLYGRAPH AS A CONDITION OF ACCESS TO SUCH DATA.

A SECOND PROPOSED CHANGE TO EXISTING POLICY WOULD AUTHORIZE USE OF THE POLYGRAPH TO ASSIST IN DETERMINING AN INDIVIDUAL'S ELIGIBILITY FOR EMPLOYMENT, ASSIGNMENT OR DETAIL TO A POSITION WITHIN THE DEFENSE INTELLIGENCE AGENCY THAT IS DESIGNATED AS A CRITICAL INTELLIGENCE POSITION BY THE DIRECTOR, DIA.

THE EXCLUSION OF THE NATIONAL SECURITY AGENCY AND THE CENTRAL INTELLIGENCE AGENCY FROM THE PROVISIONS OF H.R. 4681 INDICATES THAT THERE IS STRONG CONSENSUS THAT THE EXTREME SENSITIVITY OF THE INFORMATION DEVELOPED BY THESE AGENCIES WARRANTS THE EMPLOYMENT OF PARTICULARLY STRINGENT SECURITY MEASURES, TO INCLUDE USE OF THE POLYGRAPH, TO PROPERLY SAFEGUARD THIS

INFORMATION. CLEARLY, THERE ARE POSITIONS WITHIN THE DEFENSE INTELLIGENCE AGENCY WHICH REQUIRE ACCESS TO INFORMATION THAT IS EQUALLY AS SENSITIVE AS THAT FOUND IN NSA OR CIA. MOREOVER, THERE ARE MANY POSITIONS WITHIN DIA THAT, IN FACT, REQUIRE ACCESS TO HIGHLY CLASSIFIED NSA OR CIA DEVELOPED INFORMATION.

A FINAL, THOUGH NOT PARTICULARLY SIGNIFICANT, CHANGE TO CURRENT POLICY WOULD AUTHORIZE USE OF THE POLYGRAPH TO ASSIST IN DETERMINING THE ELIGIBILITY OF INDIVIDUALS FOR INTERIM ACCESS TO VERY SENSITIVE CLASSIFIED INTELLIGENCE SOURCES AND METHODS INFORMATION. THIS PROCEDURE WOULD BE USED ONLY WITH THE CONSENT OF THE EMPLOYEE TO COVER THOSE RARE AND UNUSUAL CIRCUMSTANCES WHEREIN IT MIGHT BE NECESSARY TO UTILIZE AN INDIVIDUAL'S SERVICES BEFORE THE TRADITIONAL PERSONNEL SECURITY FIELD INVESTIGATION CAN BE COMPLETED WITHIN THE TIME LIMIT REQUIRED. IT WOULD NOT, HOWEVER, BE CONSIDERED A SUBSTITUTE FOR THE BACKGROUND INVESTIGATION WHICH WOULD BE COMPLETED IN ANY EVENT.

THE DOD PROPOSAL INCLUDES STRINGENT SAFEGUARDS TO PROTECT THE RIGHTS OF EMPLOYEES BEFORE, DURING AND AFTER THE CONDUCT OF THE EXAMINATION.

FOR EXAMPLE: NO QUESTION COULD BE ASKED DURING THE EXAMINATION WHICH HAD NOT BEEN REVIEWED WITH THE SUBJECT PREVIOUSLY. LEGAL COUNSEL COULD BE AVAILABLE TO THE SUBJECT DURING THE EXAMINATION. ANYONE WHO DID NOT PASS ONE EXAMINATION WOULD BE ENTITLED TO A SECOND EXAMINATION BY THE SAME OR A DIFFERENT EXAMINER. THE TECHNICAL RECORDS OF THE EXAMINATION MAY NOT BE DISSEMINATED OUTSIDE THE OFFICE CONDUCTING THE EXAMINATION

EXCEPT AS REQUIRED BY LAW. AT ENCLOSURE 2 IS A DETAILED LISTING OF THE REQUIRED SAFEGUARDS.

IN SHORT, MR. CHAIRMAN, WE HAVE MADE EVERY EFFORT TO DEVISE A PROPOSAL FOR UTILIZING THE POLYGRAPH THAT IS LIMITED IN TERMS OF THOSE WHO MAY BE SUBJECT TO IT; LIMITED, IN TERMS OF THE KINDS OF QUESTIONS THAT MAY BE ASKED; AND LIMITED, IN TERMS OF ITS EFFECT ON A PARTICULAR INDIVIDUAL. AT THE SAME TIME, WE HAVE PROVIDED AS MANY SAFEGUARDS FOR THE ENTIRE PROCESS AS WE CAN DEVISE TO ENSURE OUR EMPLOYEES ARE TREATED FAIRLY, AND THAT THEIR RIGHTS AND PRIVACY ARE PROTECTED.

IT IS DIFFICULT FOR US TO IGNORE THE DEMONSTRATED UTILITY OF THE POLYGRAPH AT CIA AND NSA, WHERE IT HAS BEEN SUCCESSFULLY PUT TO USE FOR OVER TWENTY YEARS. ONE CANNOT ALSO IGNORE THE FACT THAT OUR ADVERSARIES' EFFORTS TO PENETRATE THE DEFENSE AND INTELLIGENCE ESTABLISHMENTS CONTINUE UNABATED, AND, REGRETTABLY, HAVE BEEN SUCCESSFUL, TO THE GREAT DETRIMENT OF THE UNITED STATES AND HER ALLIES. THE CASES I PREVIOUSLY CITED ARE RECENT REMINDERS OF THE RELENTLESS NATURE OF THE ESPIONAGE THREAT, AND INDEED, THE DAMAGE THAT CAN BE INFLICTED BY A SINGLE INDIVIDUAL. WE CAN SPEND BILLIONS OF DOLLARS ON SOPHISTICATED MILITARY SYSTEMS, COMMUNICATIONS SYSTEMS OR INTELLIGENCE-GATHERING PROGRAMS, ONLY TO HAVE THEM RENDERED INEFFECTIVE AS A RESULT OF ONE PERSON'S TREACHERY. WE WONDER, THEN, WHETHER IT IS WISE TO FORECLOSE, AS H.R. 4681 WOULD DO, ONE AVAILABLE MEANS OF COPING WITH THIS INSIDIOUS THREAT. OF COURSE, THE POLYGRAPH IS NOT A PERFECT TOOL, BUT WE BELIEVE IT CAN BE USED TO SUPPLEMENT OTHER

SECURITY MEASURES IN A MANNER THAT PROTECTS THE RIGHTS OF FEDERAL EMPLOYEES, WHILE AT THE SAME TIME GIVING US INDICATION OF POTENTIAL SECURITY PROBLEMS IN OUR MOST SENSITIVE PROGRAMS THAT WE DO NOT NOW HAVE.

NOW, LET ME CONCLUDE WITH SOME BRIEF REMARKS CONCERNING PRE-PUBLICATION REVIEW. HR. 4681 WOULD HAVE THE EFFECT OF PROHIBITING THE USE OF AGREEMENTS WITH PRE-PUBLICATION REVIEW REQUIREMENTS IN THEM, EXCEPT AT CIA AND NSA, AND WOULD RESCIND ANY OTHER SUCH AGREEMENTS WHICH ARE ALREADY IN EFFECT.

WE DID NOT IMPLEMENT THE NEW NON-DISCLOSURE AGREEMENT, CONTAINING THE PRE-PUBLICATION REVIEW REQUIREMENT, DEVELOPED UNDER NSDD-84. WE DID, HOWEVER, IN MARCH OF 1982, AT THE REQUEST OF THE DIRECTOR OF CENTRAL INTELLIGENCE, COMMENCE USE OF THE CIA'S UNIFORM NONDISCLOSURE AGREEMENT, CONTAINING A PRE-PUBLICATION REVIEW PROVISION AS A CONDITION OF ACCESS TO SENSITIVE COMPARTMENTED INFORMATION OR SCI. SINCE MARCH 1982 AND CONTINUING CURRENTLY, APPROXIMATELY 100,000 PERSONS WITH SCI ACCESS IN DOD, EXCLUDING NSA, HAVE SIGNED THIS FORM. ALTHOUGH IT IMPOSES A LIFETIME OBLIGATION TO SUBMIT FOR REVIEW TO THE EMPLOYING AGENCY DOCUMENTS THAT A PERSON MAY WRITE FOR PUBLICATION WHICH IN HIS JUDGMENT CONTAIN SCI, RELATIVELY FEW HAVE DECLINED TO SIGN THE AGREEMENT.

ALTHOUGH IT IS EARLY TO ASSESS THE UTILITY OF THIS AGREEMENT, IT DOES NOT TO DATE APPEAR TO HAVE HAD A SIGNIFICANT IMPACT. LEAVING NSA ASIDE (WHERE SUCH AGREEMENTS HAVE BEEN COMMONPLACE FOR MANY YEARS), THERE HAVE BEEN ONLY FIVE DOCUMENTS SUBMITTED FOR REVIEW UNDER THE SCI AGREEMENT

DOD-WIDE, AND NONE OF THOSE INVOLVED FORMER EMPLOYEES. TO OUR KNOWLEDGE, THERE HAVE BEEN NO KNOWN INSTANCES OF NON-COMPLIANCE BY FORMER EMPLOYEES WHO HAVE SIGNED THE AGREEMENT, ALTHOUGH ADMITTEDLY THE AGREEMENTS HAVE BEEN IN FORCE FOR ONLY A SHORT TIME.

IF H.R. 4681 WERE ENACTED, IT OBVIOUSLY WOULD HAVE THE EFFECT OF RESCINDING THE OLD NON-DISCLOSURE AGREEMENTS THAT HAVE BEEN SIGNED IN DOD SINCE MARCH 1982 -- ALL 100,000 OF THEM; AND IT WOULD PRECLUDE THEIR USE IN THE FUTURE IN ALL DOD COMPONENTS, SAVE NSA.

WHETHER FORMER EMPLOYEES WITH SCI ACCESS SHOULD HAVE A LASTING CONTRACTUAL OBLIGATION TO SUBMIT MATERIALS WHICH MAY CONTAIN SCI FOR GOVERNMENT REVIEW IS THE ISSUE, AND ONE WHICH HAS PROVEN VERY CONTENTIOUS. WHILE THERE ARE FEW CASES TO DEMONSTRATE A SIGNIFICANT PROBLEM -- THAT IS, WHERE FORMER EMPLOYEES WITH SCI ACCESS ACTUALLY WRITE ABOUT SENSITIVE INTELLIGENCE SOURCES AND METHODS -- WHEN THESE DO OCCUR, THE EXISTENCE OF A NON-DISCLOSURE AGREEMENT OR CONTRACT DOES PROVIDE THE GOVERNMENT WITH A REMEDY SANCTIONED BY THE SUPREME COURT IN THE SNEPP CASE THAT IT OTHERWISE WOULD NOT HAVE -- A CIVIL CAUSE OF ACTION. MOREOVER, THE REVIEW PROCESS IN EFFECT FOR SOME TIME AT CIA AND NSA HAS IN FACT SUCCEEDED IN PREVENTING A CONSIDERABLE AMOUNT OF CLASSIFIED INFORMATION FROM BEING DISCLOSED TO THE PUBLIC.

WE BELIEVE THESE BENEFITS JUSTIFY THE ESTABLISHMENT OF A PRE-PUBLICATION REVIEW REQUIREMENT IN THE SCI AREA, AND THE IMPOSITION OF A LASTING, ALBEIT VERY LIMITED OBLIGATION ON FORMER EMPLOYEES WHO HAD SCI ACCESS, TO SUBMIT DOCUMENTS WHICH IN THEIR JUDGMENT MAY REVEAL INTELLIGENCE SOURCES

AND METHODS. H.R. 4681 WOULD OBVIOUSLY CHANGE THAT, AND FORBID THE IMPOSITION OF SUCH REQUIREMENTS IN THE FUTURE.

I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

COUNTERINTELLIGENCE SCOPE

- When the scope of a polygraph examination authorized under this Regulation is limited to counterintelligence areas, questions posed in the course of such examinations shall be limited to those necessary to determine:

WHETHER THE EXAMINEE HAS:

1. Ever engaged in espionage or sabotage against the United States.
2. Knowledge of anyone who is engaged in espionage or sabotage against the United States.
3. Ever been approached to give or sell any classified materials to unauthorized persons.
4. Ever given or sold any classified materials to unauthorized persons.
5. Knowledge of anyone who has given or sold classified materials to unauthorized persons.
6. Any unauthorized contact with representatives of a foreign government.

End 1

DoD POLYGRAPH PROGRAM

SAFEGUARDS TO PROTECT RIGHTS OF PERSONNEL

- - . Individuals must be given timely notification of the date, time and place of the polygraph examination.
 - . Individuals must be advised of their right to obtain and consult with legal counsel and to have legal counsel available for consultation during the polygraph examination.*
 - . Individuals must be advised of their privilege against self-incrimination.*
 - . Examinee may, upon his or her own volition or upon advice of legal counsel, terminate the polygraph examination at any time.
 - . No relevant questions may be asked during the examination that have not been reviewed with the examinee prior to the examination.
 - . All questions asked concerning the matter at issue must have a special relevance to the subject of the inquiry. Probing of a person's thoughts or beliefs and questions about conduct which have no security implication or are not directly relevant to an investigation are prohibited (e.g., religion, racial matters, political beliefs and affiliations.)
 - . Technical questions necessary to the polygraph technique must be constructed to avoid embarrassing, degrading or unnecessarily intrusive questions.
 - . Relevant questions asked during polygraph examinations conducted for the purpose of assisting in determining eligibility for initial or continued access to classified information must be limited to prescribed counterintelligence topics.
 - . Results of an analysis of polygraph charts must be considered in the context of other investigative effort, and not as conclusive in themselves of the matter under investigation.
- * Does not pertain to polygraph examinations conducted in connection with individuals who are or who purport to be agents, sources or operatives in intelligence operations.

- . When a polygraph examination results in a finding of deception indicated, the examinee has the right to request a second examination by the examining agency.
- . Individuals transferred or reassigned to a nonsensitive position in connection with their refusal to undergo a polygraph examination shall not incur any loss in grade, rank or pay.
- . The fact that an individual has refused to undergo a polygraph examination shall not be disseminated to the individual's supervisor or employer, unless administrative action is being considered.
- . Any adverse consequences taken in cases involving the polygraph are appealable in accordance with applicable personnel or security appeals procedures.
- . Prior to the examination, examinee must be advised of the nature and characteristics of the polygraph instrument, including an explanation of the physical operation of the instrument and the procedures to be followed during the examination.
- . Examinee must be advised if the polygraph examination area contains a two-way mirror or other device, through which the examinee can be observed and if other devices such as those used in conversation monitoring or recording, will be used simultaneously with the polygraph.
- . Polygraph examination technical reports shall be retained by the office conducting the polygraph examination and shall not be disseminated outside the Department of Defense except as required by law.
- . The results of a polygraph examination may be made available only to:
 - .. Officials within DoD responsible for personnel security, intelligence, counterintelligence, law enforcement, and the administration of justice.
 - .. Law enforcement officials outside DoD when the examination has been conducted in connection with the investigation of a criminal offense or reveals criminal activity on the part of the individual examined.
 - .. The examinee or his or her legal counsel, upon request.
 - .. DoD Component members of the National Foreign Intelligence Board (NFIB) and other NFIB member agencies provided there is an official need for the material and the third agency limitation will be applied.
 - .. The National Archives and Records Service, General Service Administration, upon retirement of the file.

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- **Polygraph examinations shall be administered only by DoD polygraph examiners who have been selected, trained, and certified in accordance with established DoD policies and procedures.**
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